

1 Honorable Mary Alice Theiler
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

9 PROPET USA, INC.,
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Plaintiff,

11 Case No. C06-0186 MAT
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v.
13 LLOYD SHUGART,
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Defendant.

DEFENDANT LLOYD SHUGART'S
SUPPLEMENTAL PROPOSED JURY
INSTRUCTIONS

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16 Defendant Lloyd Shugart ("Mr. Shugart") hereby submits the forgoing Supplemental
17 Proposed Jury Instructions as requested by the Court on September 20, 2007 (Docket No.
18 120).
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1 CONTRACT FORMATION – GENERALLY

2 INSTRUCTION NO. ____

3 DEFENDANT'S PROPOSED LANGUAGE:

4 Contract formation requires a bargain in which there is an offer and a manifestation of
5 assent to the exchange and consideration. In other words, a contract is formed when one party
6 makes an offer and the other party accepts the offer.

7 An offer is the manifested willingness to enter into a bargain, inviting acceptance. An
8 offer may invite acceptance to be made by performing a specific act; however, unless
9 otherwise indicated, an offer invites acceptance by any medium that is reasonable in the
10 circumstance. Thus, assent or agreement to a contract can take many forms.

1 CONTRACT FORMATION – ASSENT

2 INSTRUCTION NO. ____

3 DEFENDANT'S PROPOSED LANGUAGE:

4 Under Washington law, express assent to a license is not required. Thus, a signed
5 contract is not always necessary. Instead, assent or acceptance can be manifested in a party's
6 actions.

7 A party can indicate agreement to a contract by breaking open the seal on a package
8 stating the terms of a contract. A party may be bound by the terms of a "shrink-wrap" license
9 by merely breaking open a package or breaking the seal.

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2 CONTRACT FORMATION – “SHRINK-WRAP” LICENSE AGREEMENTS
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4 INSTRUCTION NO. ____
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6 DEFENDANT'S PROPOSED LANGUAGE:
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8 “Shrink-wrap” licenses are seals affixed to the outside of a box or envelope which
9 contain text of the license agreement.
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11 The terms of a separate paper which is referred to on a license affixed to the outside of
12 a box or container are enforceable against the party that opened it.
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